

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED

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ROBERT R. DILLON
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

DEBBIE D. MOSS,

Plaintiff,

v.

JO ANNE BARNHART,
Commissioner of the Social
Security Administration,

Defendant.

Civil No. 04-2077 BP

**ORDER GRANTING ATTORNEY'S FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT AND 42 U.S.C. § 406(b)**

Now, on this 21st day of April, 2005, the Court, after reviewing the file and being advised by the parties that they have agreed to an award under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and 42 U.S.C. § 406(b), in connection with the court-related representation of Plaintiff in this social security appeal, finds that reimbursement for attorney fees should be made pursuant to the EAJA in the amount of \$3,900.00, and that Plaintiff should be reimbursed for costs of \$150.00 from the Judgment Fund administered by the Treasury Department. The parties also agree, and the Court finds, that Plaintiff's counsel should be awarded attorney fees under 42 U.S.C. § 406(b) in the amount of \$7,948.50. As Plaintiff's counsel is receiving attorney fees payable under the EAJA and section 406(b), Plaintiff's counsel should refund the smaller fee, under the EAJA statute, to Plaintiff.¹

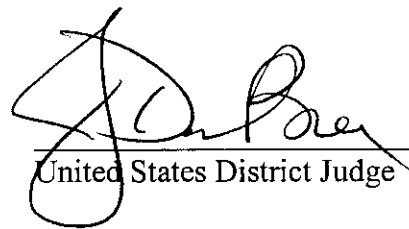
¹ If fees are awarded under 42 U.S.C. § 406(b) and EAJA, it is counsel's responsibility to refund to Plaintiff the lesser of the EAJA fees or the fees awarded pursuant to section 406(b). Congress has precluded double-dipping, i.e., receipt of attorney fees for the same services under the EAJA and the Social Security Act. On August 5, 1985, by Pub. L. No. 99-80, § 3, 99 Stat. 186, Congress amended section 206(b) of Pub. L. No. 96-481 to provide that the smaller of the fees awardable for the same work under the EAJA and the Act must be refunded to the Plaintiff.

IT IS THEREFORE CONSIDERED AND ORDERED THAT, pursuant to 28 U.S.C. § 2412, Plaintiff be awarded \$3,900.00 from the EAJA and that Plaintiff's counsel should refund this fee to Plaintiff.

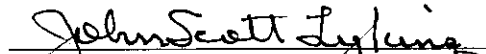
IT IS ALSO ORDERED THAT Plaintiff is awarded costs of \$150.00 to be paid from the Judgment Fund administered by the Treasury Department.

IT IS ALSO ORDERED THAT, pursuant to 42 U.S.C. § 406(b), Plaintiff's counsel be awarded \$7,948.50.

IT IS SO ORDERED.



United States District Judge

APPROVED BY:


John Scott Lykins (Disc. #6747) *By JAD*
4646 Poplar Ave., Suite 202 *By Consent*
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(901) 327-1900

Attorney for Plaintiff

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Notice of Distribution

This notice confirms a copy of the document docketed as number 28 in case 2:04-CV-02077 was distributed by fax, mail, or direct printing on April 22, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT